

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY (CONTRIBUTIONS) (AMENDMENT) REGULATIONS
2023

2023 No. 186

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to disregard from earnings two compensation payments in order to exempt them from National Insurance Contributions (NICs). The relevant payments are the Overturned Historical Conviction (OHC) compensation payments and Group Litigation Order (GLO) compensation payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 3(2) and (3) of the Social Security Contributions and Benefits Act 1992, and section 3(2) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 contain a regulation-making power to establish the basis on which the amount of earnings shall be calculated, and that payments of a particular class or description can be disregarded from that calculation. In accordance with those sections this instrument is made with the concurrence of the Secretary of State and the Department for Communities (Northern Ireland).
- 6.2 Schedule 3 to the Social Security (Contributions) Regulations 2001 (S.I. 2001/1004) specifies the payments which are to be disregarded in the calculation of earnings from employed earner's employment for the purpose of establishing liability to pay Class 1 NICs.
- 6.3 Similar provision for tax purposes is being made by the Post Office Horizon Compensation and Infected Blood Interim Compensation Payment Schemes (Tax

Exemptions and Relief) Regulations 2023. That instrument exempts the Overturned Historic Convictions compensation payments and the Group Litigation Order compensation payments from Capital Gains, Income, and Inheritance taxes.

7. Policy background

What is being done and why?

Overturned Historical Conviction (OHC) Payments

- 7.1 Post Office Limited (POL), a wholly government owned company, have set up the OHC payments scheme to compensate postmasters who were wrongfully prosecuted as a result of errors within Horizon IT software and have had their criminal convictions overturned.
- 7.2 Funding for OHC is provided fully by central government, but payments are being made by POL. Interim payments commenced from 22 July 2021.
- 7.3 Without this instrument, parts of the OHC payments would be subject to NICs. For instance, elements relating to loss of earnings would incur a NICs liability.
- 7.4 The government wishes to disregard these payments from any NICs liability so that individuals know that they do not need to report receipt of payments to HMRC.
- 7.5 The disregard will reduce the administrative burden on individuals so that their payments are full and final.

Group Litigation Order (GLO) Payments

- 7.6 The then Department for Business, Energy and Industrial Strategy (BEIS), which is now the Department for Business and Trade (DBT), as the 100% shareholder of POL, set up GLO payments to compensate postmasters who were not convicted following the Horizon errors, but successfully litigated POL, yet received only a fraction of their settlements as a result of legal fees.
- 7.7 Funding for GLO is provided fully by central government and payments are being made by DBT and have previously been made by BEIS. Interim payments commenced from 1 August 2022.
- 7.8 Without this instrument parts of GLO payments would be subject to NICs. NICs may be due on elements of payments, depending on their nature. For instance, elements relating to loss of earnings would incur a NICs liability.
- 7.9 The government wishes to disregard these payments from any NICs liability, so that like with OHC, claimants can receive full and final payments, without having to re-engage with government to pay any NICs due, thereby reducing administrative burdens.
- 7.10 This instrument amends the Social Security (Contributions) Regulations 2001 by inserting a new paragraph at the end of Part 10 of Schedule 3 (which lists payments to be disregarded in the calculation of earnings for the purposes of earnings-related contributions).

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 As this instrument does not change the substance of the regulations, there is no plan to consolidate.

10. Consultation outcome

10.1 No formal consultation exercise has been held as these are minor changes which are wholly relieving to the taxpayer.

11. Guidance

11.1 Guidance will be provided via the bodies administering the schemes.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A Tax Information and Impact Note has not been prepared for this instrument because it contains no substantive changes to NICs policy.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 There are no plans to monitor or review the instrument.

14.2 The instrument does not include a statutory review clause because it does not make or amend regulatory provisions that relate to business activity.

15. Contact

15.1 Ativie Edebiri at the HMRC Telephone: 0300 584748 or email: ativie.edebiri@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Victoria Atkins MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.